

10 Pitfalls In Determining 7(a) Eligibility

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U.S. Small Business Administration

Presented By: Ethan W. Smith, Esq.

We would like to thank Ethan for his time and providing information regarding his experience in lending and working on SBA loans from his perspective.

All opinions, conclusions, and/or recommendations expressed herein are those of the presenter and do not necessarily reflect the views of the SBA.



Presenter



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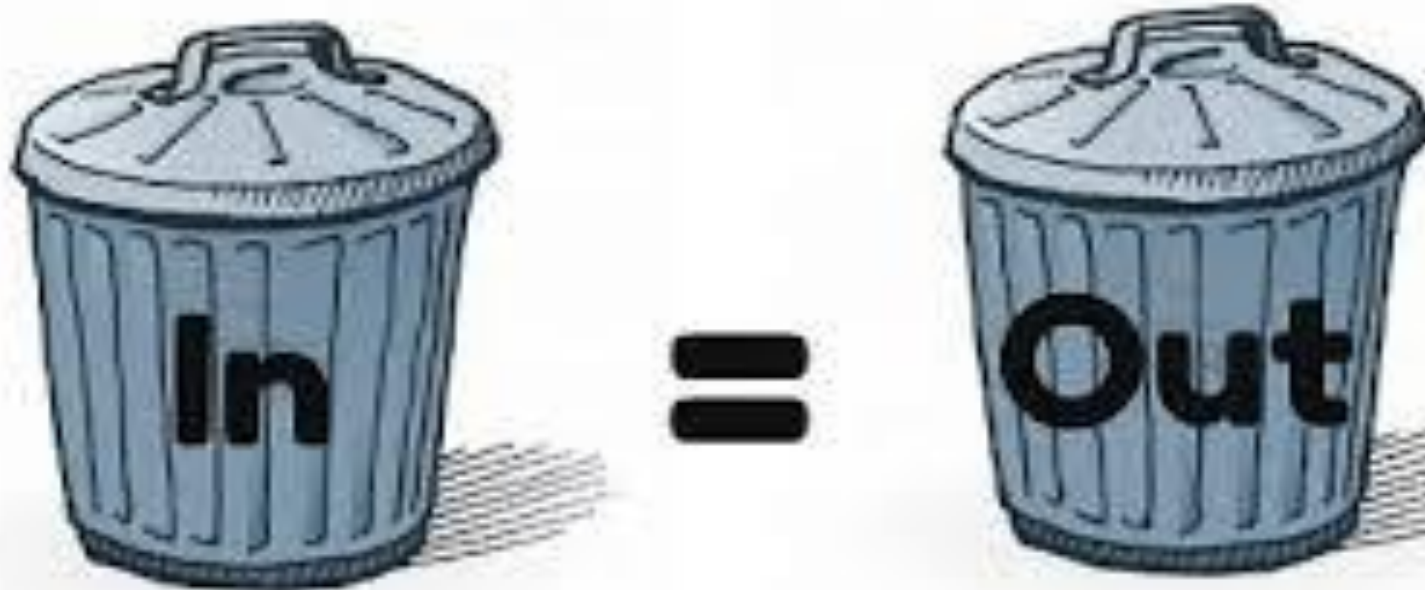
Ethan W. Smith's areas of practice focus on government guaranteed lending, commercial lending, banking, real estate and commercial law. Ethan has closed thousands of government guaranteed loans nationwide.

Starfield & Smith, P.C. is a boutique law firm specializing in all aspects of commercial lending, from origination through liquidation, for lenders nationwide. Starfield & Smith closes over \$150 million of commercial loans for its lender clients every quarter. For more information about Starfield & Smith, visit www.starfieldsmith.com

Agenda:

1. EPC Rule
2. Change of Ownership
3. Incomplete Change of Ownership
4. Size
5. Franchise
6. Credit elsewhere
7. 912 issues
8. Prior Loss
9. Aliens
10. Personal Guarantees

Guiding Principle



1. EPC Rule

□ EPC conditions – interpreted strictly

- Lease
- Rent
- Assignment
- Subordination
- Occupancy

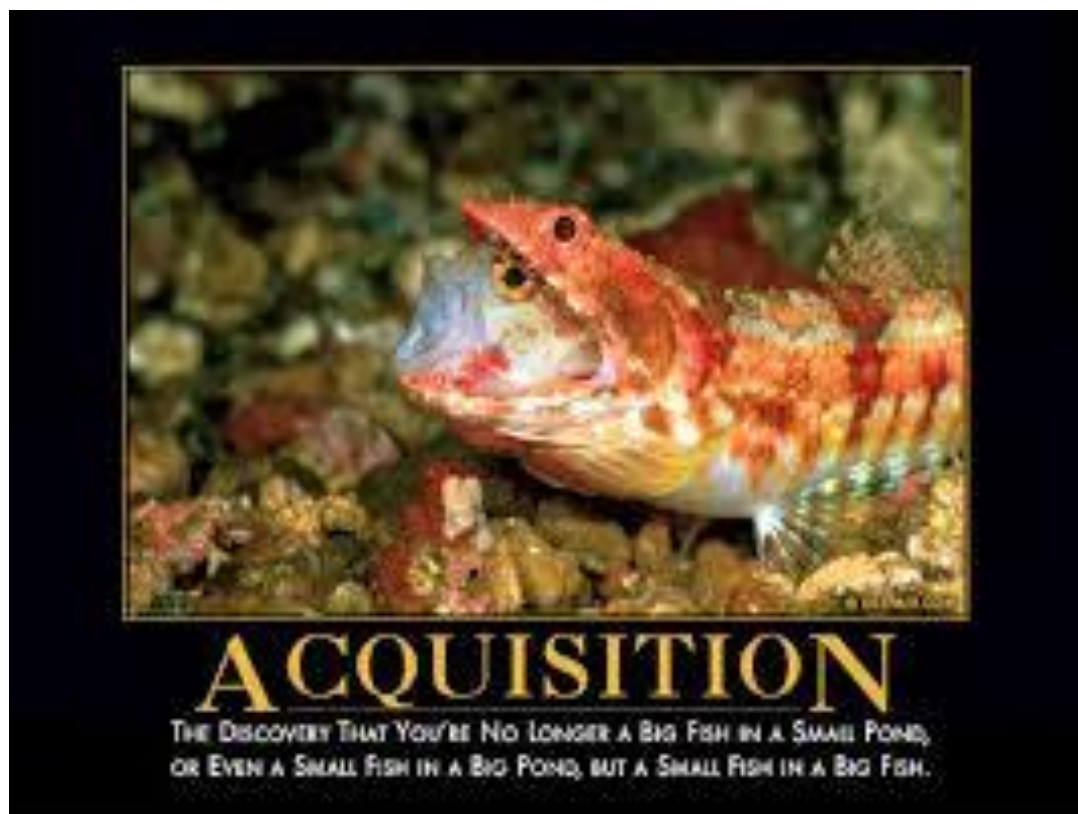
□ One EPC only

□ How do you determine if you have an EPC?



2. Change of Ownership

- ❑ CRE Purchase?
- ❑ Asset Purchase?
- ❑ Special use properties
- ❑ How do you tell?



3. “Complete COO”

- ❑ Seller on both sides of the transaction
- ❑ Impermissible payment to an associate?
- ❑ Not a complete change of ownership (Asset purchase structure does not cure)



4. Size

- ❑ IT MATTERS!
- ❑ Affiliation
- ❑ Inadequate or incorrect affiliation determination can blow the size standard
- ❑ Possible revisions to affiliation standards?



5. Franchises

□ Old Rules

□ New Rules

6. Credit Elsewhere

- ❑ What it means today
- ❑ Elimination of personal resources test
 - Lenders had better justify SBA guaranty when it has high net-worth guarantors!



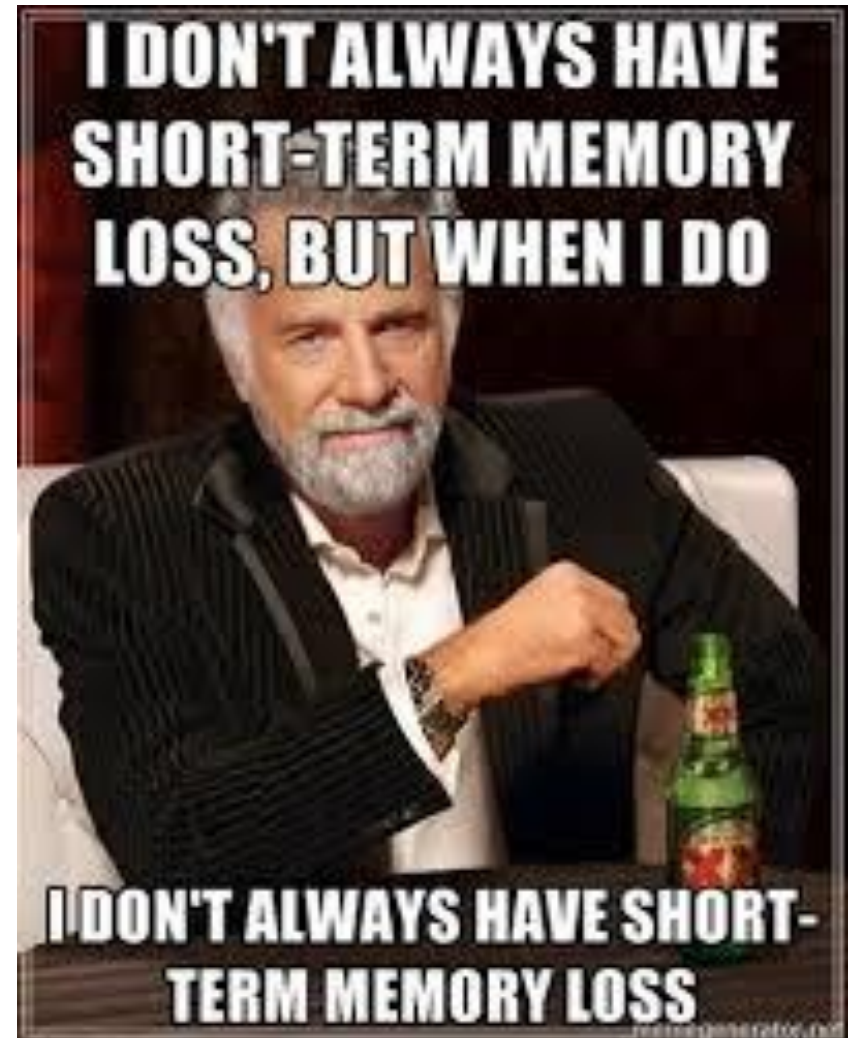
7. 912 Issues

- ❑ Criminal background checks?
- ❑ PLP clearance?
- ❑ New Rules



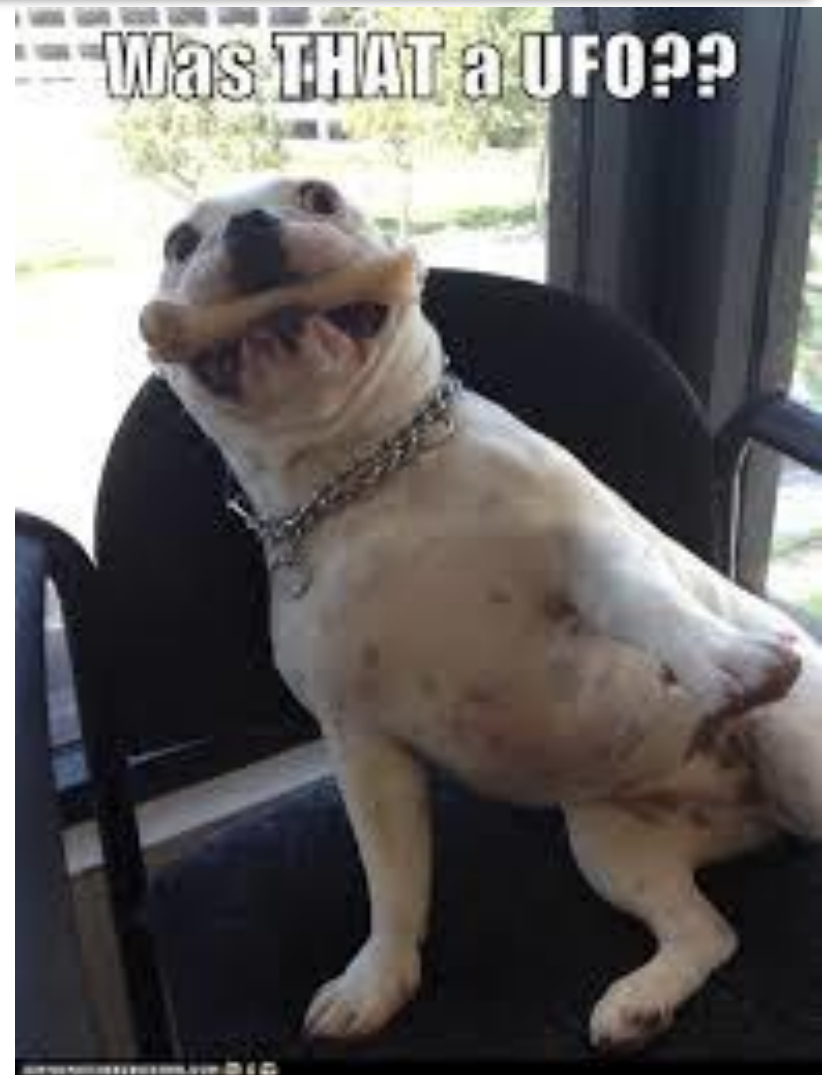
8. Prior Loss

- ❑ CAIVRS – student loan debt, other federally guaranteed financing
- ❑ Credit reporting – mandatory for all federally guaranteed loans



9. Aliens

- ❑ Businesses owned by aliens
 - LPR vs. conditional LPR
 - Non-citizens



10. Personal Guarantees

- ❑ Who must guarantee?
- ❑ How do you prove it?
- ❑ Reducing ownership
 - 6 month look back
 - Complete divestiture



Questions?



Thank You!

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